

1 contribution to the presidential campaign of Senator Ted Cruz by reporting on Cruz's announcement
2 of his candidacy on March 23, 2015, and characterizing Cruz as the first Republican to announce a
3 presidential candidacy and the first "official" candidate for President in 2016. Compl. at 1-3. The
4 Complainant states that he had announced his campaign as a Republican Presidential candidate on
5 September 13, 2013, and claims that NPR's reference to Cruz as the first Republican candidate led
6 listeners and readers to believe that no other candidates existed at the time.² *Id.* at 1, 2.

7 The Respondents state that they are members of the media whose radio and digital reports
8 fall squarely within the Act's media exemption. Comp. Resp. at 1. Respondents further state that
9 NPR is an independent media organization that is not owned or controlled by a political party,
10 political committee, or federal candidate. *Id.* at 1. Alternatively, Respondents argue that its
11 independent speech would not constitute an in-kind contribution, nor would merely reporting on
12 Cruz's announcement, without express advocacy, qualify as an independent expenditure. *Id.* at 1-2.

13 The Act and Commission regulations exclude from the definitions of "contribution" and
14 "expenditure" the cost incurred in covering or carrying a news story, commentary, or editorial by
15 any broadcasting station, newspaper, Web site, magazine, or other periodical publication, including
16 any Internet or electronic publication, unless such facilities are owned or controlled by any political
17 party, political committee, or candidate.³

² Complainant Kerry Dale Bowers filed a Statement of Candidacy with the FEC on April 28, 2014, and Kerry Bowers for President ("the Bowers Committee") filed a Statement of Organization on May 5, 2014. The Bowers Committee raised and spent a total of \$1,868, which falls below the \$5,000 minimum threshold to become a candidate under the Act and Commission regulations. See 52 U.S.C. § 30101(2). The Bowers Committee's request for termination was approved on October 8, 2015. The Complaint also states that fifty-five other Republican candidates had filed Statements of Candidacy with the FEC prior to the Cruz filing. According to FEC filings, only eight of those fifty-five candidates reported raising or spending more than \$5,000 during the campaign, and none were among the seventeen Republican candidates that were involved in the Republican Party's 2015-2016 Presidential debates and forums. The Complainant concludes that the radio announcement was fabricated and limited his ability to raise funds or retain the status he had prior to the Respondents' news segment.

³ See 52 U.S.C. § 30101(9)(B)(i); see also 11 C.F.R. § 100.73 (excluding *bona fide* news coverage from the definition of "contribution"); 100.132 (same as to the definition of "expenditure").

1 The Commission uses a two-step analysis to determine whether the media exemption applies.

2 First, the Commission considers whether the entity in question is a media entity, focusing on
3 whether the entity produces, on a regular basis, a program that disseminates news stories, editorials,
4 and/or commentary.⁴ Second, the Commission considers two factors in determining the scope of the
5 exemption: (1) whether the press entity is owned or controlled by a political party, political
6 committee, or candidate; and, if not, (2) whether the media entity is acting as a media entity in
7 conducting the activity at issue (*i.e.*, whether the entity is acting in its "legitimate press function").⁵

8 With respect to the second factor, when determining whether an entity is engaging in a legitimate
9 media function, the Commission examines (1) whether the entity's materials are available to the
10 general public; and (2) whether they are comparable in form to those ordinarily issued by the entity.⁶

11 It is unrefuted, and the record indicates, that NPR produces news stories on a regular basis; it
12 is not owned or operated by a political party, political committee, or candidate; and when it
13 disseminated the news story at issue, it was operating within its legitimate press function. Therefore,
14 NPR's activities in this matter fall within the media exemption, and we recommend that the
15 Commission find no reason to believe as to both Respondents.

16 RECOMMENDATIONS

- 17 1. Find no reason to believe that National Public Radio and Audie Cornish violated the Act
- 18 and Commission regulations;
- 19 2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
- 20 3. Close the file as to all respondents.
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⁴ See Advisory Opinions 2010-8 (Citizens United); 2005-16 (Fired Up!); and 1996-16 (Bloomberg).

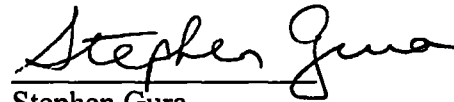
⁵ See *Reader's Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

⁶ *Id.*

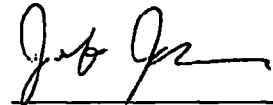
Lisa J. Stevenson
General Counsel

Kathleen M. Guith
Associate General Counsel

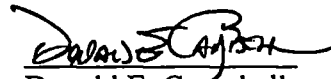
BY:



Stephen Gura
Deputy Associate General Counsel



Jeff S. Jordan
Assistant General Counsel



Donald E. Campbell
Attorney

5.31.17
Date

Attachment:
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: National Public Radio
Audie Cornish

MUR 7230

I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by National Public Radio ("NPR") and Audie Cornish (collectively, "the Respondents"). It was scored as a low-rated matter under the Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Complaint alleges that the Respondents violated the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations, claiming that the Respondents made a contribution to the presidential campaign of Senator Ted Cruz by reporting on Cruz's announcement of his candidacy on March 23, 2015, and characterizing Cruz as the first Republican to announce a presidential candidacy and the first "official" candidate for President in 2016. Compl. at 1-3. The Complainant states that he had announced his campaign as a Republican Presidential candidate on September 13, 2013, and claims that NPR's reference to Cruz as the first Republican candidate led listeners and readers to believe that no other candidates existed at the time.¹ *Id.* at 1, 2.

¹ Complainant Kerry Dale Bowers filed a Statement of Candidacy with the FEC on April 28, 2014, and Kerry Bowers for President ("the Bowers Committee") filed a Statement of Organization on May 5, 2014. The Bowers Committee raised and spent a total of \$1,868, which falls below the \$5,000 minimum threshold to become a candidate under the Act and Commission regulations. See 52 U.S.C. § 30101(2). The Bowers Committee's request for termination was approved on October 8, 2015. The Complaint also states that fifty-five other Republican candidates had filed Statements of Candidacy with the FEC prior to the Cruz filing. According to FEC filings, only eight of those fifty-five candidates reported raising or spending more than \$5,000 during the campaign, and none

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5 argue that its independent speech would not constitute an in-kind contribution, nor would
6 merely reporting on Cruz's announcement, without express advocacy, qualify as an independent
7 expenditure. *Id.* at 1-2.

8 **B. Legal Analysis**

9 The Act and Commission regulations exclude from the definitions of "contribution"
10 and "expenditure" the cost incurred in covering or carrying a news story, commentary, or
11 editorial by any broadcasting station, newspaper, Web site, magazine, or other periodical
12 publication, including any Internet or electronic publication, unless such facilities are owned or
13 controlled by any political party, political committee, or candidate.²

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15 applies. First, the Commission considers whether the entity in question is a media entity,
16 focusing on whether the entity produces, on a regular basis, a program that disseminates news
17 stories, editorials, and/or commentary.³ Second, the Commission considers two factors in
18 determining the scope of the exemption: (1) whether the press entity is owned or controlled by a
19 political party, political committee, or candidate; and, if not, (2) whether the media entity is

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2 “legitimate press function”).⁴ With respect to the second factor, when determining whether an
3 entity is engaging in a legitimate media function, the Commission examines (1) whether the
4 entity’s materials are available to the general public; and (2) whether they are comparable in
5 form to those ordinarily issued by the entity.⁵

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7 basis; it is not owned or operated by a political party, political committee, or candidate; and when
8 it disseminated the news story at issue, it was operating within its legitimate press function.
9 Therefore, NPR’s activities in this matter fall within the media exemption, and the Commission
10 finds no reason to believe that the Respondents violated the Act and Commission regulations.

⁴ See *Reader’s Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

⁵ *Id.*